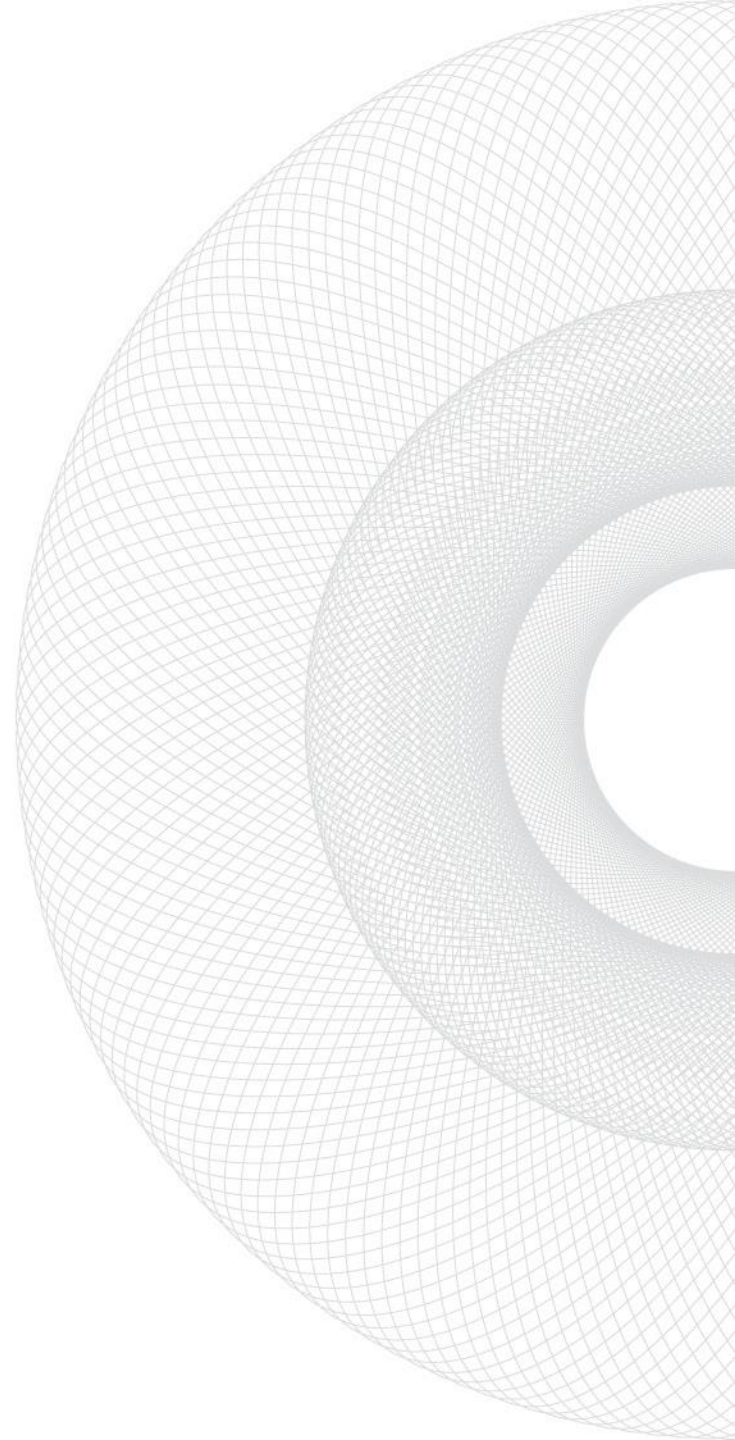


ENERGY LAW NEWSLETTER

The next step towards the Energy Union – The European Commission's "Winter Package"

KINSTELLAR

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“The Winter Package” of The European Commission

In February 2015 the European Commission (the “**Commission**”) announced its Energy Union program, aimed at creating a truly integrated energy market. The Commission also announced an action plan with more than thirty items for the implementation of the Energy Union. As a first step, the Commission published its “Summer Package” in July 2015. (See our previous commentary on the *Energy Union* and the *Summer Package* available at: <http://www.kinstellar.com/insights/detail/271/recent-developments-in-the-implementation-of-the-european-energy-union>)

Following the publication of the Summer Package, the Commission presented the “Winter Package” on 16 February 2016 as the next important step towards the implementation of the Energy Union.

The Winter Package consists of the following documents:

- Commission proposal for a Regulation on the security of gas supply;
- Commission proposal for a Decision on energy related intergovernmental agreements;
- Commission Communication on the strategy for liquefied natural gas (LNG) and gas storage; and
- Commission Communication on the strategy for heating and cooling.



Proposal for a regulation on the security of gas supply

The security of gas supply stress tests conducted by the Commission in 2014 demonstrated the necessity of revising the current Regulation on security of gas supply. The Winter Package's **proposal for a new Regulation** aims at further strengthening the security of the gas supply in all Member States of the European Union ("EU"), even in situations of gas shortage caused by exceptionally high demand or supply disruption.

- The proposal **groups Member States into regions**. The national regulatory authorities of each regional group would jointly identify and assess all risks affecting the security of gas supply regionally and based on these results, prepare a **Preventive Action Plan and an Emergency Plan every four years**. These plans must be submitted to the Commission, which may ask the relevant authorities to modify them if the measures do not seem appropriate.
- The proposal emphasises the **solidarity principle among Member States**. In a situation of a supply crisis, when market mechanisms are not able to secure the gas supply for households and essential public services, the gas supply for **protected customers has to be resolved with the help of neighbouring Member States**. To ensure the successful implementation of the solidarity principle, the proposal **would oblige Member States** to agree on the technical, legal and financial arrangements of their cooperation.
- Under the proposal, natural gas undertakings will **have to notify the regulatory authorities** and the Commission **of any new or amended agreements** (unless the amendment only relates to pricing) that are relevant for the security of supply. This notification obligation applies to agreements that were concluded with a third country, have a duration of more than one year, and account for more than 40 % of a Member State's annual natural gas consumption.



Proposal for a regulation on the security of gas supply (cont.)

- Pursuant to the proposal, natural gas undertakings would also need to be actively involved in strengthening the security of the gas supply. They have to ensure the supply of gas to households and protected customers for a 7-day period in case of extreme weather conditions, or for at least 30 days in case of exceptionally high gas demand. Natural gas undertakings have to comply with their obligations by means of regional and EU-wide measures rather than national ones. The national regulatory authorities will identify the natural gas undertakings subject to the regulation.
- Transmission system operators must already enable bidirectional capacity (reverse flow) at gas interconnection points. Under the proposal, all decisions concerning the capacity of gas interconnection points or an exemption from the obligation to build reverse flow capacity will have to be jointly adopted by the relevant neighbouring Member States. In addition to the neighbouring Member States, also such countries will need to be involved in the decision making process, which may be concerned by the usage of the interconnection capacity. The Commission would have the right to revise the decision of the Member States.

Kinstellar comment: The proposed Regulation clearly evidences the Commission's strong regional and EU focus in the regulation of the energy markets. Through this regional approach, the Commission aims at strengthening solidarity among Member States and security of supply, all the while decreasing the Member States' authority to regulate their energy markets.

A good example of this approach is the requirement that prevention and emergency plans be adopted regionally (the current regulation requires only regional consultation) or the further limiting of Member States' power to regulate the use of interconnection capacities. These two measures result in both the strengthening of the security of supply and the limiting of Member States' sovereignty. In addition, through its proposal, the Commission aims to enhance the transparency of natural gas markets and increase the role of natural gas undertakings in securing the supply.



Proposal for a decision on energy related intergovernmental agreements

With this proposal, the Commission aims to increase the transparency of energy related intergovernmental agreements and to ensure that they are harmonised with EU laws and policies. The proposal **covers agreements between Member States and third countries that may affect the EU's energy security and supply**, except for nuclear related agreements which fall under EURATOM.

- Pursuant to the proposal, Member States **will have to inform the Commission** of their intention to enter into a new or to amend an existing intergovernmental agreement **before the negotiations are opened**. Non-binding documents, such as memoranda of understanding or joint declarations must also be notified to the Commission.
- The Member State **must send the draft of the intergovernmental agreement to the Commission**. The Commission reviews it and notifies the Member State of its concerns (if any). The Member State shall **take utmost account** of the Commission's opinion, and may not conclude the agreement before receiving it.
- The Member States have three months from the Decision's coming into force to **notify the Commission of all existing intergovernmental agreements**.

***Kinstellar note:** the stricter supervision of intergovernmental agreements is in line with the Commission's general objective to limit Member States' authority in energy regulatory matters. The most significant change compared to the current framework is the Commission's right to investigate intergovernmental agreements before their conclusion. Based on its experience, the Commission has put emphasis on receiving notification of the Member State's intentions at the very beginning of the negotiation process. Not only binding intergovernmental agreements would be subject to the notification obligation but also memoranda of understanding and similar documents. These are typically entered into at the beginning of the discussions, which means that the Commission will be able to follow the intergovernmental cooperation from an early stage.*



Strategy for liquified natural gas (LNG) and gas storage

Whilst the total capacity of EU gas storage facilities seems sufficient, their geographical distribution is not consistent. According to the Commission's new strategy, **further measures need to be taken in relation to the utilisation and accessibility of storage facilities**. In this context, the Commission points out that gas transmission tariffs vary widely across the EU, which decreases the competitiveness of the gas storage. Therefore, the Commission deems it necessary to adopt **an EU-wide network code to regulate and harmonise transmission tariffs** in order to enhance the competitiveness of gas storage.

In the Commission's view new gas storage facilities should also meet the **technical requirements of renewable types of gas**.

Another important objective is the optimisation of the **cross border usage of gas storage facilities** through the adoption of regional Prevention Action Plans and Emergency Plans by Member States. Using gas storage facilities for the purpose of ensuring the security of gas supply can increase their utilisation and ensure their availability for every Member State both for the short and long term.

***Kinstellar note:** the strategy for LNG and gas storage shows the Commission's intention to adopt a more harmonised regulation, and presumably also regarding gas storage tariffs through the application of network codes.*



Strategy on heating and cooling

The strategy on heating and cooling proposed by the Commission is the first comprehensive initiative from the Commission to address the issues around the heating and cooling energy of buildings and industry. The strategy focuses on the removal of barriers to decarbonisation of buildings and industrial facilities. The Commission recommends making modernisation of buildings easier, promoting proved energy efficiency models and increasing the reliability of energy efficiency certificates.

It is expected that the revision of the Renewable Energy Directive and the Energy Performance of Buildings Directive will be an important step in the implementation of the strategy.

Kinstellar note: heating and cooling systems play an important role in reaching policy objectives for energy efficiency, use of renewable energy sources and modernisation of buildings. In our view the strategic document presented by the Commission is a largely symbolic step. Its significance will be evaluated in the future, once proposals for industry specific regulations that contain precise regulatory measures are presented.



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